

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KATHERINE MANSELL,

Plaintiff and Appellant,

v.

DOUGLAS W. OTTO et al.,

Defendants and Respondents.

B155418
(Los Angeles County
Super. Ct. No. BC240194)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[No Change in Judgment]

It is ordered the opinion filed herein on April 29, 2003, is modified in the following particular:

Delete the paragraph beginning on the bottom of page 13 and continuing on page 14 of the typed opinion. In its stead, add the following paragraph:

Also, unlike the cases noted above, in the present case appellant's confidential records were not delivered to counsel, but were delivered to the court under seal. It was the court who then released appellant's records to the prosecutor, who in turn, provided copies to respondents.⁴⁴ After the Supreme

⁴⁴ The trial court in the present case impliedly found respondents received the mental health records inadvertently. However, this is not strictly accurate from respondents' perspective. As is perhaps normal during discovery, respondents' request was extremely broad. They sought as much information regarding appellant's medical and mental history as they thought might exist. From their perspective, the records they received were exactly what they asked for. There

Court's decision in *People v. Hammon*,⁴⁵ the trial court in the underlying matter was under no legal compulsion at the pretrial stage of the proceedings to review appellant's records in camera to determine which, if any of the records could be released to counsel under the now overruled authority of *People v. Reber*.⁴⁶

Petitioner's petition for rehearing is denied.

This modification does not result in a change in the judgment.

PERLUSS, P.J.

JOHNSON, J.

WOODS, J.

was nothing to indicate respondents thought release of any of the records was inadvertent.

For this reason, the decision in *State Compensation Ins. Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644 is inapplicable. In *State Compensation* the court held an attorney could comply with ethical standards, and not be disqualified, if upon receipt of confidential and privileged documents apparently sent inadvertently, the lawyer receiving such materials refrains from examining them beyond ascertaining their privileged nature, and immediately notifies the sender he or she possesses materials which appear to be privileged.

Because respondents received the very documents they requested it was not reasonably apparent to them appellant's records were provided through inadvertence. In any event, they did not refrain from examining the records, and certainly did not immediately notify the sender they were in receipt of apparently privileged records received inadvertently.

⁴⁵ *People v. Hammon* (1997) 15 Cal.4th 1117.

⁴⁶ *People v. Reber* (1986) 177 Cal.App.3d 523, expressly disapproved in *People v. Hammon, supra*, 15 Cal.4th 1117, 1123.